

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIC TOLLIVER,

Plaintiff,

v.

C.O. J. Skinner, et al.,

Defendants

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#
DATE FILED: 12/18/13

**NOTICE OF MOTION FOR LEAVE TO
AMEND COMPLAINT AND EXTENSION
OF TIME TO COMPLETE SERVICE UPON
REMAINING DEFENDANTS OF AMENDED
SUMMONS AND COMPLAINT**

12 Civ. 971 (DAB) (KNF)

PLEASE TAKE NOTICE that upon the annexed affirmation of **ERIC TOLLIVER**, affirmed on December 16 2013, and upon the exhibits attached thereto, the Proposed Amended Complaint and Letters in support of this motion, the pleadings herein, plaintiff will move this Court, before the **Honorable Deborah A. Batts, J.**, United States District Judge, for an Order pursuant to Rules 15(a) and 6(b) 1(a) of the Federal Rules of Civil Procedures granting; Leave to Amend the Complaint and filing the Amended Complaint submitted:

1. Deeming, the copy of the Proposed Amended Complaint served upon the represented defendants Attorney General, be deemed sufficient service upon defendants of the Amended Complaint.
2. Extending the time to make and complete service of the Amended Complaint upon the named defendants.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: December 2013
Fallsburg, New York


ERIC TOLLIVER
Pro-se Plaintiff
Sullivan Correctional Facility
P.O. Box – 116
Fallsburg, New York 12733-0116

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIC TOLLIVER,

Plaintiff,

v.

C.O. J. Skinner, et al,

Defendants

**AFFIRMATION IN SUPPORT OF MOTION
FOR LEAVE TO AMEND COMPLAINT AND
EXTENSION OF TIME TO COMPLETE
SERVICE UPON REMAINING DEFENDANTS
OF AMENDED SUMMONS AND COMPLAINT**

12 Civ. 971 (DAB) (KNF)

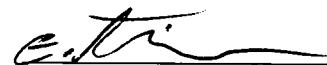
I, ERIC TOLLIVER, affirm under penalty of perjury that:

1. I, ERIC TOLLIVER, am the pro-se plaintiff in the above entitled action, and respectfully move this Court to issue an Order granting plaintiff Motion to amend complaint.
2. The reason why I am entitled to the relief I seek is the following. The three (3) defendants plaintiff wants to make apart of the complaint, violated plaintiff's Due Process and Constitutional Rights, have to do with the unlawful confinement of plaintiff. Attached is the amended complaint as Exhibit – A. **These violations was done under the continuing violation doctrine.**

WHEREFORE, I respectfully request that the Court grants this motion, as well as such other and further relief as may be just and proper.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: December 2013
Fallsburg, New York


ERIC TOLLIVER
Pro-se Plaintiff
Sullivan Correctional Facility
P.O. Box – 116
Fallsburg, New York 12733-0116

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIC TOLLIVER

" FIRST
AMENDED
COMPLAINT

(In the space above enter the full name(s) of the plaintiff(s).)

12 Civ. 971 (BAB)(KNF)

COMPLAINT

under the
Civil Rights Act, 42 U.S.C. §1983

v.

Defendant No. 1 _____

Jury Trial: Yes No
(check one)

Defendant No. 2 _____

Defendant No. 3 Lt. T. LEVAC

Defendant No. 4 D.S.S. R. COVENY

Defendant No. 5 Director ALBERT PRACK

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identified to those contained in Part I. No addresses should be included here.)

I. Parties in this complaint:

- A List your name, identification number, and the names and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff Name Eric Tolliver
ID # 94-B-1563
Current Institution Sullivan Correctional Facility
Address P.O.Box 116
Fallsburg, New York 12733

- B List all defendant's names, positions, place of employment, and the address where each defendant may be served. Make sure the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 2 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

Defendant No. 3 Name Lt. T. Levac, hearing officer Shield # _____
 Where Currently Employed Five Points Corr. Fac.
 Address P.O. Box 119
Romulus, New York 14541

Defendant No. 4 Name D.S.S. R. Coveny, review off. Shield # _____
 Where Currently Employed Five Points Corr. Fac.
 Address P.O. Box 119
Romulus, New York 14541

Defendant No. 5 Name Albert Prack, Director Shield # _____
 Where Currently Employed D.O.C.C.S.
 Address 1220 Washington Ave. Building-2
Albany, New York 12226-2050

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the event rise to your claim(s) occur? Sullivan Corr. Fac.

B. Where in the institution did the events giving rise to your claim(s) occur? Visiting Room

C. What date and approximate time did the events giving rise to your claim(s) occur?

September 11, 2011 2:00 P.M.

D. Facts: On 5/16/2013, I was called before L.t. T. Levac, for a Re-hearing. It was during this Re-hearing that this said officer violates plaintiff's due process and constitutional rights. See, plaintiff's complaint-grievance and appeal against this said officer attached hereto as Exhibit-A. D.S.S. R. Coveny, was order to conduct a discretionary review of the said Re-hearing of Lt. Levac, and all the violations that was done, D.S.S. R. Coveny chose to turn a blind eye to all the violation plaintiff alleged and denied plaintiff's discretionary request. See, plaintiff discretionary review request and D.S.S. R. Coveny decision attached hereto as Exhibit-B. On 7/17/13, plaintiff appeal the violations that was done to him at the Re-hearing to Director Albert Prack, in Albany, and this Director chose to turn a blind eye and denies plaintiff's appeal. See, plaintiff's appeal and Director Albert Prack decision attached hereto as Exhibit-C. All Exhibits attached herein as plaintiff's complaint against all defendants.

All the witnesses that was called at the first Superintendent hearing.

III. Injuries:

If you sustained related to the events alleged above, describe them and state what medical treatment, if any, you required and received.

IV. Exhaustion of Administrative Remedies:

The Prisoners Litigation Reform Act ("PLRA"), 42 U.S.C. §1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted". Administrative remedies are also known as grievance procedures.

A. Did you claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes No _____

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s). Sullivan Correctional Facility

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes No _____ Do Not Know _____

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes _____ No Do Not Know _____

If YES, which claim(s)? _____

D. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose not cover some of your claim(s)?

Yes _____ No

If YES, which claim(s)? _____

E. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes No _____

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes _____ No _____

F. If you did file a grievance, about the events described in this complaint, where did you file the grievance? Five Points Correctional Facility

1. Which claim(s) in this complaint did you grieve? The issue with defendant Lt. Levac

2. What was the results, if any? Grievance denied

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process. Appeal to the Superintendent, then appeal his denial to Albany

G. If you did not file a grievance, did you inform any officials of your claim(s)?

Yes _____ No _____

1. If YES, whom did you inform and when did you inform them? I did file a grievance

2. If NO, why not? yes I did file a grievance

I. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies. I did appeal all of my claimed violations to Albany, and then on an Article 78 to the Albany Supreme Court

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you. ORDER THESE CHARGES BE DISMISS AND REMOVED FROM MY INSTITUTIONAL RECORDS, AND THAT I be paid one hundred and fifty dollars for each day I spend in the SHU, and also one million doll1rs from each defendants in this case for all the pain and suffering each one inflicted upon me.

VI. Previous Lawsuits:

A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

On These claims

Yes _____ No /

B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes _____ No _____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?

On
Other
claims

Yes _____ No

D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes _____ No _____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

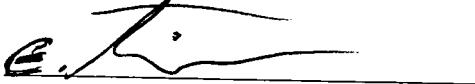
I declare under penalty of perjury that the foregoing is true and correct.

Signed this 16 day of December, 2013.

Signature of Plaintiff Eric Tolliver
Inmate Number 94-B-1563
Institution Address Sullivan Corr. Fac.
P.O.Box 116
FAlseburg, New York 12733

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and address.

I declare under penalty of perjury that on this 16 day of December, 2013, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the Untied States District Court for the Southern District of New York.

Signature of Plaintiff: 

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Eric Tolliver

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

C.O. J. Skinner, et al.,

(In the space above enter the full name(s) of the defendant(s) /respondent(s).)

12 Civ. 971 (DAB) KNF

REQUEST TO PROCEED
IN FORMA PAUPERIS

I, Eric Tolliver, (print or type your name) am the plaintiff/petitioner in the above entitled case and I hereby request in forma pauperis and without being required to prepay fees or costs or give security. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore, and I believe I am entitled to redress.

1. If you are presently employed:

- a) give the name and address of your employer
- b) state the amount of your earnings per month

Sullivan Corr. Fac. Law Library,

16-Dollars per month

2. If you are NOT PRESENTLY EMPLOYED:

- a) state the date of start and termination of your last employment
- b) state your earnings per month

YOU MUST ANSWER THIS QUESTION EVEN IF YOU ARE INCARCERATED.

I am employed and I earn 16-dollars per month.

3. Have you received, within the past twelve months, any money from any source? If so, name the source and the amount of money you received.

no

a) Are you receiving any public benefits?

No.

Yes, \$ _____.

b) Do you receive any income from any other source?

No.

Yes, \$ _____.

4. Do you have any money, including any money in a checking or savings account? If so, how much?

No. Yes, \$ _____.

5. Do you own any apartments, house, or building, stock, bonds, automobiles or other property?

If the answer is yes, describe the property and state its approximate value.

No. Yes, \$ _____.

6. Do you pay rent or for a mortgage? If so, how much each month?

No. Yes, \$ _____.

7. List the person(s) that you pay money to support and the amount you pay each month.

NONE

8. State any special financial circumstances which the Court should consider.

NONE

I understand that the Court shall dismiss this case if I give a false answer to any questions in this declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 16 day of December, 2013
date *month* *year*


Signature

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PRISONER AUTHORIZATION

Mailed to Plaintiff by the Court on this date:

RE: Eric Tolliver

(Enter the full name of the plaintiff(s).)

-v- C.O. J. Skinner, et al.,

(Enter the full name of the defendant(s).)

NOTICE IS HEREBY GIVEN THAT THIS ACTION WILL BE DISMISSED UNLESS PLAINTIFF COMPLETES AND RETURNS THIS AUTHORIZATION FORM TO THIS COURT WITHIN FORTY-FIVE (45) DAYS FROM THE DATE OF THIS NOTICE.

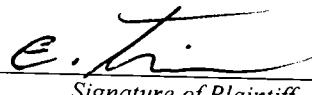
The Prison Litigation Reform Act ("PLRA" or "ACT") amends the *in forma pauperis* statute (28 U.S.C. §1915) and applies to your case. Under the PLRA, you are required to pay the full filing fee when bringing a civil action if you are currently incarcerated or detained in any facility. If you do not have sufficient funds in your prison account at the time your action is filed, the Court must assess and collect payments until the entire filing fee of \$350 has been paid, no matter what the outcome of the action.

SIGN AND DATE THE FOLLOWING AUTHORIZATION:

I, Eric Tolliver (print or type your name), request and authorize the agency holding me in custody to send to the Clerk of the United States District Court for the Southern District of New York, a certified copy of my prison account statement for the past six months. I further request and authorize the agency holding me in custody to calculate the amounts specified by 28 U.S.C. §1915 (b), to deduct those amounts from my prison trust fund account (or institutional equivalent), and to disburse those amounts to the United States District Court for the Southern District of New York. This authorization shall apply to any agency into whose custody I may be transferred.

I UNDERSTAND THAT BY SIGNING AND RETURNING THIS NOTICE TO THE COURT, THE ENTIRE COURT FILING FEE OF \$350 WILL BE PAID IN INSTALLMENTS BY AUTOMATIC DEDUCTIONS FROM MY PRISON TRUST FUND ACCOUNT EVEN IF MY CASE IS DISMISSED.

December 16, 2013
Date Signed


Signature of Plaintiff

N.Y.S.I.D. # _____

Local Jail/Facility I.D. # 94-B-1563

Federal Bureau of Prisons I.D. # _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ERIC TOLLIVER,

Plaintiff,

AFFIRMATION OF SERVICE

v.

C.O. J. Skinner, et al,

Defendants

12 Civ. 971 (DAB) (KNF)

I, ERIC TOLLIVER, declare under penalty of perjury that I have served a copy of the attached: Notice of Motion for Leave to Amend Complaint and Extension of Time to Serve Remaining Defendants, and Affirmation In Support of Notice of Motion, and Affirmation of Service Upon:

OFFICE OF THE ATTORNEY GENERAL
120 Broadway
New York, N.Y. 10271-0332

Dated: December 2013
Fallsburg, New York



ERIC TOLLIVER
Pro-se Plaintiff
Sullivan Correctional Facility
P.O. Box – 116
Fallsburg, New York 12733-0116

EXHIBIT- A

**NEW YORK STATE - DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION
FIVE POINTS CORRECTIONAL FACILITY**

MEMORANDUM

TO: Lt. T. Levac, Acting Captain
FROM: Michael Sheahan, Superintendent
SUBJ.: Designation to Conduct a Tier III Hearing
DATE: May 15, 2013

Pursuant to Title 7, Chapter 254.1, the Superintendent may, if sufficient reason exists, designate personnel to conduct a Tier III hearing on his behalf.

I am designating LT. Tad Levac, to conduct the Tier III Hearing for Misbehavior Report for Offender Toliver, Eric 94B1563; Inc. Date & Time: 09/11/11 2:00pm..

M. Sheahan
MICHAEL SHEAHAN, SUPERINTENDENT

Cc: Discipline Office
Hearing Packet

Eric Tolliver, 94-B-1563
Five Points Corr. Fac.
State Route 96, P.O. Box 119
Romulus, New York 14541

Dated May 24, 2013

TO: The Inspector General's Office

Dear Sir/Madam.

Very good day to you. I am writing this letter to you in regards to an incident between my self and LT. Levac, Inclose is a copy of the grievance and complaint that I have filed to the inmates grievance program. I want this office to know that I do take these threats from LT. Levac very seriously. Therefore, I do need this matter to be urgently investigated, this officer is known to set inmates up with weapons and drugs. This matter is very serious, and I am taking it seriuos, therefore, I awaits your reply to this matter, have yourself a bless day.

very truly yours

Eric Tolliver, 94-B-1563
11-A1-18-B

cc. file
attorney
superintendent
home

GRIEVANCE COMPLAINT

FIVE POINTS CORR. FAC.
LOC. 11-A1-18-B28 - Wants HO
to recuse self

FPT-27560-13

ERIC TOLLIVER, 94-B-1563
DATE MAY 24, 2013

COMPLAINT: At the above date and approximetly 2:45 P.M. I was called to the hearing room on the flats in 11-block to continue a re-hearing for a tier- 3 hearing that was reverse by the supreme court because of errors at the first hearing. As I got to the hearing and stand before LT. Levac, who was appointed by the superintendent to hold my re-hearing, we start to talk about the witness that I do need to called to testify on my behalf, this LT. got very upset and start to swear and threatened me and stated that he is trying to find a way to not only find me guilty, but also how is it that he could give me at lest a year in the SHU. I then ask this LT. Levac, what is the reason for him to be this upset at me ? And his answer was " You and I know very well that I don't like you, and you know this from the time that you was voted the ILC chairman, and I was the supervisor for the ILC, I did already talk to you about bringing my name to the superintendent at the ILC executive meetings, and you not only did it once but twice, so now that I have you in front of me for a new hearing what do you rely think is going to be the out come ?" This LT. Levac, then ordered me out of the room, and I complied and went back to my cell and tell my cell mate what have just took place between myself and the LT. Therefore, because of this fact, it is impossible for me to get a fear hearing. Therefore, I am also requesting the video recorder of the hearing room between 2:30 P.M. and 3 P.M. on the above date be saved for my review. I also want to state that this officer have been threatening me since I was the ILC chairman and he was the staff advisor.

ACTION REQUESTING: That this hearing officer Mr, Levac, recuse himself as my hearing officer and a new hearing officer be appointed.

RECEIVED

yours truly

JUN 07 2013

Eric Tolliver, 94-B-1563
11-A1-18-B

IGRC

cc. file
attorney
albany
superintendent
home

X Eric Tolliver
E.T.

NO SIGNATURE

FORM 2131E (REVERSE) (REV. 6/06)

Response of IGRC: FPT-27560-136/12/13
box

Grievant received a Tier III ticket on 09/11/11 at Sullivan C.F. related to the instant grievance. A re-hearing for that MBR occurred on 05/24/13 and dates subsequent dates as needed. Grievant is attempting to affect the outcome of his hearing by requesting a different hearing officer. In addition to the actual hearing whereby the grievant has the opportunity to call witnesses, present any mitigating circumstances and provide relevant evidence in his own defense, he is also provided with the opportunity to appeal the disposition in accordance with 7NYCRR, Chapter V. This appeal mechanism affords the opportunity to remedy any factual or procedural errors in his disciplinary report or process. Grievant has not exhausted his disciplinary hearing and appeal options for that misbehavior report. The named staff member denies the grievant's allegations of harassment or threats towards the grievant. The grievance process is not intended as a way to circumvent or mitigate the disciplinary hearing and appeal process.

Date Returned to Inmate (6/17/13) IGRC Members _____Chairperson *(Signature)***Grievance Denied**

Return within 7 calendar days and check appropriate boxes.*

- I disagree with IGRC response and wish to appeal to the Superintendent.
- I agree with the IGRC response and wish to appeal to the Superintendent.

- I have reviewed deadlocked responses.
Pass-Thru to Superintendent
- I apply to the IGP Supervisor for review of dismissal

Signed

Ehic Toliver

Grievant

6-18-2013

Date

Grievance Clerk's Receipt

Date

To be completed by Grievance Clerk.GrievanceAppealed to the Superintendent _____
Date _____Grievance forwarded to the Superintendent for action _____
Date _____

(PK)

 STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES and COMMUNITY SUPERVISION INMATE GRIEVANCE PROGRAM SUPERINTENDENT RESPONSE	GRIEVANCE NO. FPT 27560-13	DATE FILED 06/07/13
	FACILITY Five Points Correctional Facility	POLICY DESIGNATION I
	TITLE OF GRIEVANCE WANTS H.O. TO RECUSE SELF	CLASS CODE 28
	SUPERINTENDENT'S SIGNATURE	DATE 6/25/2013
GRIEVANT: TOLLIVER, Eric	DIN # 94B1563	HOUSING UNIT 11-A1-18B

The investigation reveals that grievant alleges the Hearing Officer harassed and threatened him during a re-hearing for an incident at Sullivan CF. The Hearing Officer supplied a written statement and stated that he denies threatening or swearing at the grievant. The Hearing Officer states that this was a re-hearing and the time that was previously issued to the grievant cannot be exceeded and that the hearing had already been extended several times to retrieve the 14 witnesses that the grievant requested.

Appeal denied. *AGA*

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have four (4) working days from receipt of this notice to file your appeal. Please state why you are appealing this decision to C.O.R.C.

I disagree with this decision due to the fact that I have yet to receive a written disposition of this (so-called Superintendent's hearing) in violation of 7NYCHL 254-7(A) sec. 5 (24 hours violation)

Eric Tolliver
Grievant's Signature

6/26/2013
Date

Grievance Clerk's Signature

Date



BRIAN FISCHER
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF CORRECTIONAL SERVICES
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

MEMORANDUM

FROM: Karen Bellamy, Director, Inmate Grievance Program
SUBJ: Receipt of Appeal

E TOLLIVER 94B1563 10/17/13
Five Points Correctional Facility
Your grievance FPT-27560-13 entitled
Wants Hearing Officer To Recuse Self
was rec'd by CORC on 7/8/13

A disposition will be sent to you after the grievance is reviewed by CORC

GRIEVANCE COMPLAINT

ERIC TOLIVER
9461563

28
 error from
 TIER III APPEAR
 ISSUE

11-AI-18-6 CELL

DATE 7-26-2013

COMPLAINT ON 7-16-2013, I RECEIVED MY INMATE MONTHLY STATEMENT AND NOTICE THAT FIVE DOLLARS (\$5) WAS TAKEN FROM MY INMATES ACCOUNT FOR A TIER-3 HEARING, THAT HELD OUT OF MY PRESENTS, IT STATES THAT I WAS FOUND GUILTY, I THEN DID A F.O.I.L. REQUEST TO HAVE THE TAPE AND DOCUMENTS OF THIS HEARING SENT TO ME FOR MY REVIEW, DUE TO THE FACT THAT THE HEARING OFFICER LT. KREJAC, DID NOT SEND ME ANY DECISION OF THIS HEARING OR ANY NOTICE OF MY RIGHTS TO APPEAL, NEITHER DID HE OR ANY OTHER OFFICER ADVISE ME OF THE RIGHTS I AM GIVING UP IF I REFUSED TO ATTEND THE HEARING IN PERSON. HOWEVER, ON 7-26-2013, A OFFICER FROM THE F.O.I.L. OFFICE BRINGS ME A TAPE PLAYED AND I TAPE OF THIS TIER-3 HEARING, I THEN LISTEN TO THIS TAPE OVER 3-TIMES AND NOTICE THAT THIS HEARING OFFICER INTENTIONALLY DOCTHEDED-CUT OUT A PART OF THE HEARING THAT RECODED HIM SNEAKING AND THREATENING ME, HE ALSO CUT OUT THE PART WHERE I CAUGHT THE OFFICER WHO WROTE THE FALSE TICKET AGAINST ME, IN HIS LIES, THESE AND MANY MORE MISDEEDS WAS DONE BY THIS OFFICER AT THIS HEARING.

ACTION REQUESTED: THAT THIS HEARING AGAINST ME BE DISMISSED, AND THESE FACTS I STATED BE INVESTIGATED, AND THIS OFFICER BE DISCIPLINED FOR HIS INTENTIONAL WRONG DOINGS AGAINST ME.

CC. FILE
 SUPERINTENDENT
 ALBANY
 COUNSELOR

YOURS TRULY
 ERIC TOLIVER
 9461563
 11-AI-18-6

FIVE POINTS CORRECTIONAL FACILITY

To: E. Tolliver 94B1563 11-A1-18B
From: P. O'Neill, IGPS *recd*
Subject: Grievance Dated 07/26/13
Date: 08/01/13

Directive 4040, 701.5 (a) (1) states in part that a grievance must be submitted within 21 days of an alleged occurrence. Section 701.6 (g) (1) (i) (a) states in part that an exception to the time limit for filing a grievance may not be granted more than 45 days after an alleged occurrence. The instant grievance refers to a misbehavior report (MBR) issued on 09/11/11, and a court-ordered rehearing for that MBR occurring on 06/11/13; it focuses on events alleged to have occurred during that hearing. The time limit for filing that grievance has expired; as such, your grievance is being returned to you and will not be further processed at this time.

To reiterate, an exception to the time limit for filing this grievance cannot be granted by me at this time because it has well surpassed the maximum 45-day limit in which such an exception might be granted.

Per 701.6, (g) (1) (ii), an offender may pursue a complaint that an exception to the time limit was denied by filing a separate grievance.

cc: file

Grievance - Complaint

FPT 27774-13

Eric Tolliver

94-B-1563

44
DISAGREE WITH
DENIAL DECISION

11-A1-18-B

Dated 8/4/2013

Complaint: I am appealing the denial of my grievance, by Mr, O'neill, grievance supervisor, dated 8/1/2013. Mr, O'neill, denied my grievance claiming that my grievance is late. This decision by MR, O'neill is wrong. As noted by my grievance, I did not know that my tier three hearing tape was intentionally tampered with, and all of my objections was erase until I made my f.o.i.l. request and have the chance to listen to the tape, then I notice that the tape was tampered with, and thats the day I file my grievance on this issue, therefore, my grievance is on time because I file my grievance on the date that I discover the violation, a reading of my grievance do state this fact outlined in this letter, attach herein is a copy of your denial and a copy of my original grievance for you to file. Thanks very much for your time into this very important matter, have your self a bless day and I await your filing of my grievance. Thanks once more.

RECEIVED
AUG 06 2013

IGRC

yours truly
E. Tolliver, 94-b-1563
11-A1-18-B

cc.file

Reu

FORM 2131E (REVERSE) (REV. 6/06)

Response of IGRC: FPT-27774-13

8/13/13

Grievant is contesting that a recent grievance received by the IGP on 08/01/13 was returned to him as untimely. He asserts that a rehearing for a misbehavior report issued in 2011 was conducted on 06/11/13, that it was done without his being present, and that the hearing tape was altered. He asserts that he only found out about this on 07/26/13. Unfortunately, Directive 4040 leaves no wiggle room in allowing an exception to the time frame for filing a grievance beyond 45 days from the date of the occurrence. In this case, the date of the occurrence was the hearing date, not the date of discovery. It is noted that if grievant has a rehearing for the above referenced MBR on 06/11/13, then he has not currently exhausted all of his appeal options for that MBR in accordance with 7NYCRR, Chapter V.

Grievance Denied

Date Returned to Inmate 8-15-13 IGRC Members Sgt Tuck
B. Sandro
Chairperson (initials) D. Eley
Dee

Return within 7 calendar days and check appropriate boxes.*

- I disagree with IGRC response and wish to appeal to the Superintendent.
- I agree with the IGRC response and wish to appeal to the Superintendent.
- I have reviewed deadlocked responses.
Pass-Thru to Superintendent
- I apply to the IGP Supervisor for review of dismissal

Signed Eric Tolliver
Grievant

8-16-2013
Date

Grievance Clerk's Receipt _____

Date _____

To be completed by Grievance Clerk.

GrievanceAppealed to the Superintendent _____
Date _____

Grievance forwarded to the Superintendent for action _____
Date _____

 INMATE GRIEVANCE PROGRAM SUPERINTENDENT RESPONSE	STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES and COMMUNITY SUPERVISION	GRIEVANCE NO. FPT-27774-13	DATE FILED 08/06/13
	FACILITY Five Points Correctional Facility	POLICY DESIGNATION I	
	TITLE OF GRIEVANCE Disagree With Denial Decision	CLASS CODE 44	
	SUPERINTENDENT'S SIGNATURE <i>DSS R. G. S. S.</i>	DATE 08/20/13	
	GRIEVANT: Tolliver, E	DIN # 94B1563	HOUSING UNIT I1-A1-18B

Grievant is contesting that a grievance was rejected as untimely by the IGPS on 08/01/13. That grievance referred to a disciplinary hearing occurring on 06/11/13 in which he alleges tampering.

Directive 4040, 701.6 (g) (1) (a) states in part that an exception to the time limit for filing a grievance may not be granted more than 45 days after an alleged occurrence. That time frame was exceeded and, as such, rejection of the grievance as untimely was appropriate. It is noted that grievant had not exhausted his disciplinary appeal options on 08/01/13.

Appeal denied.

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent, please sign below and return this copy to your Inmate Grievance Clerk. You have four (4) working days from receipt of this notice to file your appeal. Please state why you are appealing this decision to C.O.R.C.

I disagree with this decision due to the fact that I file my grievance on the said date I listen to the hearing tape and notice that the hearing officer K.T. Nevac had tampered with the hearing tape.

Eric Tolliver

Grievant's Signature

8-21-2013

Date

Grievance Clerk's Signature

Date

EXHIBIT “B”

CHAPTER V, SEC. 254.9

RE: DISCRETIONARY REVIEW BY SUPERINTEND

DATED 7/16/2013

Dear Superintendent Sheahan,

very good day to you. I am writing you this discretionary review request asking you to dismiss these charges against me because my DUE PROCESS AND CONSTITUTIONAL RIGHTS WAS SERIOUSLY VIOLATED by the hearing officer:

1. My Superintendent hearing that was held at Sullivan Correctional Facility, on 9/11/11, was reversed by the State Appellate Court on 4/16/13, see reversal - court decision attached herein as **Exhibit A**. A re-hearing was never started until 5/16/13; I plead not guilty to the charges and started to make my objections as to the timeliness of the re-hearing, for which the hearing officer then stopped the tape recorder and then started swearing and threatening me. I then filed a grievance complaint against this official and let it be known that, I won't be attending anymore, as long as this officer is holding the hearing, see complaint attached as **Exhibit B**. I was again called for another hearing session and I [had] refused to attend, and later that day, one C.O. by the name of Goddell came to my cell with a refusal form for me to sign, and [I] then took the form from him and wrote my reason for not attending the hearing on it, along with a copy of the grievance - complaint attached to it. All this took place on 5/24/2013; I was never again called to another hearing session, I was never given a disposition of the hearing, I had no idea whether the hearing was still going on out of my presence, or had it ended. It was not until I receive my inmates monthly statement on 7/16/2013, see, my inmates monthly statement attached herein as **EXHIBIT-C**. This is when I notice that a \$5 sircharge was taken out of my account for an disciplinary tier 111 dated 6/18/2013, therefore, this hearing must be dismiss for these reasons:

SEVERAL VIOLATIONS

1. By law the inmate who refused to attend his hearing **MUST** be advised of all the rights he or she is giving up in refusing to attend. see, **Tafari v. Selsky**, 836 N.Y.S.2d 306, attached herein as **Exhibit-D**. I was never given any advise by neither the hearing officer or the officer who brings me the refusial form for me to sign, therefore, this hearing must be dismiss.

2. My rights to appeal the hearing was violated by the hearing officer not sending me a copy of the disposition and the evidence relied upon at the hearing in making his decision, neither was I notified of my rights to appeal. see, **Directive 4932 sec.254.8, and also 7 NYCRR 254.7(A)(5)**. **Therefore, because of all these violations**, this hearing must be dismiss, and all the charges expunged from my record.

very truly

DATED: 7/17/2013
SENECA, NEW YORK 14541

Eric Tolliver, 94-B-1563
11-A1-18-B
Five Points Corr. Fac.
State Route 96, P.O.Box 119
Romulus, New York 14541

cc. file
Superintendent
Albany

August 11, 2013

RE: Discretionary Review By Superintendent

Dear Superintendent Sheahan,

very good day to you. I am writing this letter to you asking please could you tell me what is the status of my Discretionary Review, that I have submitted to you on are about 7/16/2013. I have yet to get any response to my request, therefore, please could you tell me what is the status. Thanks very much for your time in this matter, have yourself a very bless day, GOD BLESS.

ET yours truly
Eric Tolliver, 94-b-1563

11-A1-18-B

cc. file



STATE OF NEW YORK
**DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION**
FIVE POINTS CORRECTIONAL FACILITY

MEMORANDUM

TO: **E. TOLLIVER** **94B1563** **11-A1-18B**
FROM: R. Coveny, Deputy Superintendent for Security 
DATE: August 13, 2013
SUBJECT: **Discretionary Review**

I am in receipt of your letter to Superintendent Sheahan regarding a Discretionary Review. After review, you do not currently have any disciplinary sanctions in effect.

RC/lk
Cc: File

Dated August 20, 2013

RE: Discretionary Review Requested

Dear Dep. Coveny,

very good day to you. I am writing this letter to you in response to a reply you have sent to me dated August 13, 2013. I did have a Superintendent's hearing stated on May 16, 2013, and ended June 11, 2013, this hearing was held by LT. Levac, this was a RE-Hearing of a reverse prior hearing. After this new hearing I was found guilty by LT. Levac, I then sent a discretionary review request with the issues of the alleged violations that take place at the hearing. This request was acknowledge by the Superintendent himself. Therefore, when I receive your letter stating that after reviewing the records, you did not see any currently disciplinary sanctions against me in effect, I think that you may have misunderstood what is it I was inquiring about, therefore, now that I have inform you about the facts of the matter, please I am asking, what is the status of my discretionary review request that was sent to and acknowledge by the superintendent? Thanks very much for your time into this very important matter, I awaits your response to this letter, have yourself a bless day.

yours truly


Eric Tolliver, 94-B-1563
11-A1-18-B

cc. file
Superintendent



STATE OF NEW YORK
DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION
FIVE POINTS CORRECTIONAL FACILITY

MEMORANDUM

TO: **E. TOLLIVER** **94B1563** **11-A1-18B**
FROM: R. Coveny, Deputy Superintendent for Security **(HC)**
DATE: August 28, 2013
SUBJECT: **Discretionary Review**

I am in receipt of your letter to my office. After closer review, I discovered this was a re-hearing for a prior incident. The disposition has already been served. I will not adjust any sanctions imposed.

RC/bd
Cc: File

EXHIBIT “C”



STATE OF NEW YORK

**DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION**

THE HARRIMAN STATE CAMPUS – BUILDING 2

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

JOSEPH F. BELLNIER
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

August 16, 2013

Mr. Eric Tolliver
#94-B-1563
Five Points Correctional Facility
6600 State Route 96
Caller Box 400
Romulus, New York 14541

Dear Mr. Tolliver:

This is in response to your letter regarding the appeal of your Superintendent's Hearing of June 11, 2013.

Please be advised that your appeal was received on July 22, 2013. This office has 60 days from the date it was received to render a decision. A review will be conducted in accordance with established procedures and you will be notified directly of the results.

As you await a response, I encourage you to exhibit positive behavior and avoid any further disciplinary problems.

Sincerely,

A handwritten signature in black ink, appearing to read "Prack".

Albert Prack
Director, Special Housing/
Inmate Disciplinary Programs

AP:tb

cc: Superintendent Sheahan, Five Points Correctional Facility
Central Files

NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
THE HARRIMAN STATE CAMPUS - BUILDING 2
1220 WASHINGTON AVENUE
ALBANY, N.Y. 12226-2050

ANTHONY J. ANNUCCI
ACTING COMMISSIONER

JOSEPH BELLNIER
DEPUTY COMMISSIONER
CORRECTIONAL FACILITIES

REVIEW OF SUPERINTENDENT'S HEARING

NAME: TOLLIVER, ERIC

NO. 94B1563

HEARING FACILITY: FIVE POINTS

ON BEHALF OF THE COMMISSIONER AND IN RESPONSE TO YOUR RECENT
LETTER OF APPEAL, PLEASE BE ADVISED THAT YOUR SUPERINTENDENT'S HEARING OF
JUNE 11, 2013, HAS BEEN REVIEWED AND AFFIRMED ON SEPTEMBER 23, 2013.

ALBERT PRACK
DIRECTOR, SPECIAL HOUSING/
INMATE DISCIPLINARY PROGRAM

CC: FACILITY SUPERINTENDENT
CENTRAL OFFICE FILES

APPEAL DECISION RENDERED PURSUANT TO SECTION 254.8 OF CHAPTER V AND
ELECTRONICALLY PRODUCED UPON THE AUTHORITY OF THE DIRECTOR OF SPECIAL
HOUSING/INMATE DISCIPLINE PROGRAM.

RECEIVED

SEP 24 2013

TIER OFFICE

ERIC TOLLIVER, 94-B-1563
SULLIVAN CORRECTIONAL FACILITY
P.O.BOX 116
FALLSBURG, NEW YORK 12733-0116

PRO SE
TO: THE PRO SE CLERK
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
DANIEL PATRICK MOYNIHAN UNITED STA
COURTHOUSE
500 PEARL STREET
NEW YORK, NEW YORK 10007-1312

